

*Before the*  
POSTAL REGULATORY COMMISSION  
WASHINGTON DC 20268-0001

Evansdale Post Office  
Evansdale, Iowa 50707

Docket No. A2013-2

PUBLIC REPRESENTATIVE'S COMMENTS  
IN LIEU OF INITIAL BRIEF

(December 21, 2012)

I. STATUS OF THE CASE

This is the second time in a relatively short span that a case involving local postal retail facility in Evansdale, Iowa — interchangeably referred to as a Post Office, branch, and finance unit in the official Administrative Record — has been before the Commission.

In the first docket — No. A2011-103 — the Commission remanded the case to the Postal Service for reconsideration of a deficiency in the economic analysis.<sup>1</sup> Specifically, the Commission found that the Postal Service had claimed savings that would not be realized for at least 4 years. The Commission found this was not consistent with one of the applicable statutory criteria (§ 404(d)(2)(A)(iv)).

However, there was an important intervening event between the filing of the original appeal and issuance of the Commission's remand: namely, the Postal

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<sup>1</sup> Docket No. A2011-10 3, Order No. 1141, Order Remanding Determination, January 18, 2012 (Order No. 1141)

Service's unilateral decision to close the Evansdale Post Office, without awaiting the results of the Commission's deliberations. To this day, that action remains largely unexplained.

Later, the closed office apparently was transformed into a suspended office following the remand. Then, the Postal Service improvised an approach to the posting requirement by posting the closing announcement at the Waterloo Post Office, rather than at Evansdale. (Although it is unlikely that posting the notice at the closed office would provide actual notice to any patron.) Upon learning of the proposed closing, Evansdale Mayor Chad Deutsch, who was a lead petitioner in the original case, filed an appeal of the "new" proposed closing.<sup>2</sup>

Those familiar with the Commission's approval of the Post Office Structure Plan (in Docket No. N2012-2) may assume that it effectively puts to rest questions about the "A case" process. However, the reality, as with most major efforts, is that a few loose ends remain. The promising aspect is that the Evansdale appeal demonstrates that addressing these "loose ends" does not have to be a continuing drain on post office patrons, the Postal Service, and the Commission and a tough slog through administrative records. Instead, several approaches might be employed to handle individual cases effectively and promote public confidence in the administrative process.

## II. THE INTEREST OF THE GENERAL PUBLIC

It is in the interest of the general public that matters like closings of post offices, stations and branches be conducted in ways that citizens perceive as fair, open, transparent and free of inter-agency conflict. It is hard to conceive of a situation where a postal patron would be pleased to hear that his or her ability to successfully challenge a closing or consolidation turned on a longstanding regulatory dispute over the definition of a post office.

The Petition and the Administrative Record in this case highlight reasons why the Evansdale case might foster citizen concerns about the appeal process:

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<sup>2</sup> Appeal of Revised Final Determination of Evansdale, Iowa Branch-Evansdale, Iowa 50707, November 14, 2012 (Petition)

- the Postal Service's reliance on its longstanding distinction between post offices, on the one hand, and stations and branches, on the other, notwithstanding seemingly interchangeable use of these terms<sup>3</sup> in the official Administrative Record;
- the Postal Service's seemingly premature and unilateral closing of the Evansdale facility while an appeal was pending and, in any event, well in advance of issuance of the Commission's dispositive order;
- the apparent absence of any guidance from the Commission about its expectations of how the Postal Service is to proceed on remand in its remand orders or in agency rules
- the possibility that recently-revised Commission rules on post office appeals, however useful in other respects, may not be well-suited to handling appeals that involve atypical issues, and the related possibility that atypical issues may be more likely to foster appeals and/or remands;
- uncertainty over whether the existing framework for A case appeals allows the Commission to employ any useful pre-decisional tools, such as Information requests or notices of inquiry, to obtain useful clarifications or explanations about matters include in, or missing from, the Administrative Record; and
- and the problematic nature of administrative records, which seem designed more as a vehicle for archiving standard forms than for promoting transparency and accountability.

### III. FURTHER DISCUSSION

The Commission's approval of the Post Office Structure Plan (in Docket No. N2012-2) is widely expected to stem the tide of post office closings. By extension, this should substantially reduce appeals of post office closings to the Commission. Although some may disagree with the new approach, it is clear that the Postal Service, the Commission, and the postal community at large have put considerable effort into

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addressing today's postal challenges, especially those affecting patrons of smaller offices. In contrast, patrons of stations and branches may continue to find themselves in a regulatory limbo. And there is concern that the closing of the Evansdale Post Office while the appeal was pending at the Commission may reflect the Postal Service's disagreement with the Commission's stance on rights of patrons of stations and branches.

In fact, the reappearance of the Evansdale case is a cautionary tale, whispering — if not shouting — that not all matters related to closings and consolidations are settled. The unsettled matters affecting the interests of the general public include:

- the longstanding conflict over the definition of a post office;
- the extent of the Postal Service's responsibilities in the face of a remand;
- the practice of suspending offices and the consequences of suspension;
- the adequacy and accuracy of financial/economic analyses; and
- the logic of closing of profitable facilities, such as Evansdale and Pinehurst.<sup>4</sup>

#### IV. CONVENTIONAL ISSUE ANALYSIS

In this case, the Petitioner contends (1) the Postal Service failed to reevaluate the factors set out in 39 U.S.C. § 404(d)(2)(A), including the Postal Service's failure to consider the effect of the closing on the community and the failure to consider economic savings (see 39 U.S.C. §§ 404(d)(2)(A)(i) and (iv)); and (2) the Postal Service failed to follow procedures required by law regarding closures (see 39 U.S.C. § 404(d)(5)(B)). See Petition at 1.

In the absence of rules expressly addressing remands, a review of Commission dockets leads to the conclusion that the Commission has treated a case in which a remand is issued as administratively closed following the remand, rather than simply dormant. The appeal of a closing in a remand situation is docketed and treated as a

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<sup>4</sup> See Docket No. A2011-49.

new, independent case. It follows, under this approach, that the “new” administrative record is subject to across-the-board review on all pertinent points, not simply on the remanded issue(s).

## V. POSSIBLE ALTERNATIVES OR SUPPLEMENTAL APPROACHES

In light of the foregoing discussion, the Commission may want to consider whether there are any ways to handle a dwindling number of section 404 appeals that would leave all concerned with a greater sense of fairness, openness, transparency, and regulatory cooperation. One possibility might be the use of special rules of practice permitting petitioners to direct information requests to the Postal Service, through the auspices of the Commission or a special master. Special rules might also alternative forms of providing notice. In the instant case, it is possible that allowing the petitioner to explore the reason for the seemingly premature closing in the Evansdale case and the later conundrum of suspending a closed office might have produced satisfactory answers, and led to withdrawal of the petition. An agreement on alternative notice might have meant that interested persons were kept informed of the Postal Service’s intention. The possibility is that this could have fostered a better understanding of the proposal, if not acceptance or agreement.

The Commission employed special procedural rules of practice in omnibus rate cases in the Postal Reorganization Act era to handle the special demands of those proceedings. The rules were used with the agreement of the Postal Service and parties. While the circumstances are not identical, the expectation that there will still be some A case appeals under POSTplan warrants pursuing a creative and collaborative approach to improve the process. It does not seem productive to continue on the existing path.

Consequently, as a means of promoting the interests of the general public identified above, the Commission may want to consider initiating a dialogue with the Postal Service on ways to improve openness and transparency of the appeals process through special rules. It may also want to consider whether there is a need for

amendments to its existing rules to address expectations (of the Commission, affected patrons, and the general public) of what should unfold in the wake of a remand.

Finally, pursuing a legislative solution is also a possibility.

#### VI. CONSISTENCY WITH APPLICABLE CRITERIA

With respect to the instant appeal, the Public Representative agrees with the Petitioner's assessment of deficiencies in the Administrative Record:

[i]n preparing the revised final determination, the Postal Service apparently failed to reevaluate factors set out in 39 U.S.C. § 404(d)(2)(A). ... It appears that the Postal Service did not conduct a new review or analysis of the required factors. Even though the Evansdale Branch had already been closed, there was no information in the revised final determination about the effects on the community, whether adequate service was being provided and what economic savings had been realized as a result of the closing.

Petition at 3.

The Petitioner's additional assessment also appears to be sound:

... the largest item of savings claimed by the Postal Service was EAS Craft & Labor. However, the Postal Service stated that the sole employee assigned to the Evansdale Branch transferred to a vacant position within the administrative office of the Waterloo Post Office. In Order No. 1141, the Commission found that there would be no cost savings if the employee was simply being transferred to another facility. In the revised final determination, the Postal Service failed to explain the basis for the claimed savings for EAS Craft & Labor.

*Id.*

Reliance on the Commission's traditional approach and the conventional analysis supports the Petitioner's position.

In closing, the Public Representative adds that the Postal Service's pre-emptive action in closing the Evansdale facility bears at least some resemblance to the Gepp Arkansas Post Office closing (Docket No. A2011-60). The undersigned has reason to believe that the Gepp Post Office has reopened; thus, there is precedent for re-opening the closed Evansdale Post Office, which the record shows was a net money-maker for the Postal Service.

Respectfully submitted,

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